

**IN THE UNITED STATES DISTRICT COURT  
OF THE EASTERN DISTRICT OF PENNSYLVANIA**

BEY DILEMANI, ) File No. 02-CV-2614  
vs. )  
BUCA, INC., )  
Plaintiff, )  
Defendant. )  
)  
STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )  
)  
  
**SECOND AFFIDAVIT  
OF DANIEL C. GERHAN IN SUPPORT  
OF DEFENDANT  
BUCA, INC.'S MOTION  
FOR SUMMARY JUDGMENT**

DANIEL C. GERHAN, being duly sworn and under oath states that:

1. I am one of the attorneys representing Defendant BUCA, Inc. in this action.

I submit this affidavit in support of Defendant BUCA, Inc.'s Motion for Summary Judgment.

2. Attached as Exhibit 1 are the following relevant excerpts from the deposition of

## Bey Dilemani:

Cover page, 245-46, and 256-57.

This completes my affidavit, which consists of two typewritten pages and the attached Exhibit 1.

Subscribed and sworn to before  
me this 19<sup>th</sup> day of February, 2003.

Notary Public  
M1:965915.01

A rectangular notary seal with a decorative scalloped border. Inside, the text "NOTARY PUBLIC" is at the top, followed by "JUDITH M. KIRBY" in a large serif font, "Notary Public" in a smaller serif font, "Minnesota" in a sans-serif font, and "My Commission Expires Jan. 31, 2005" at the bottom. The seal features a circular emblem on the left with a figure and the text "THE GREAT SEAL OF THE STATE OF MINNESOTA".

Daniel C. Gerhan  
DANIEL C. GERHAN

DÁNIEL C. GERHAN

***CERTIFICATE OF SERVICE***

I hereby certify that on February 19, 2003, I electronically filed the foregoing with the Clerk of Court using the ECF system. This document is available for viewing and downloading from the ECF system.

Additionally, a copy of the foregoing was mailed to the attorney named below at the address shown below by UPS Next Day Air from Minneapolis, MN on February 19, 2002:

**Mr. Scott B. Goldshaw  
Michael J. Salmanson, P.C.  
1515 Locust Street, 10th Floor  
Philadelphia, PA 19102**

*/s/ Daniel C. Gerhan*  
Daniel C. Gerhan

# **EXHIBIT 1**

## COPY OF TRANSCRIPT

### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BEY DILEMANI  
52 Brinker Drive  
Doylestown, PA

Plaintiff

v

Civil Action  
No. 02-CV-2614

BUCA, INC.  
1300 Nicollet Mall  
Suite 5003  
Minneapolis, MN 55403

Defendant

Oral deposition of JAMES M. COWLER, taken at the LAW OFFICES OF MICHAEL J. SALMANSON, P.C., 1515 Locust Street, 10th Floor, Philadelphia, Pennsylvania, beginning at 10:28 a.m., on Thursday, January 9, 2003, before Carmen A. Santone, Court Reporter, pursuant to notice.



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EXHIBIT 1

ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

1           Q.    During the entire course of  
2    your career at any of your past  
3    employers, can you recall hiring a  
4    person who at the time was at least  
5    50 years old?

6           A.    Yes.

7           Q.    How many people can you  
8    recall hiring during --

9           A.    I don't know. I mean, the  
10   first one that comes to mind is  
11   Dennis up in Allentown, who's 54.

12          Q.    At the time he was hired?

13          A.    The restaurant's been  
14   opened two and a half years. So he  
15   must have been 52.

16          Q.    Dennis who?

17          A.    Sifiles, S-i-f-i-l-e-s.

18          Q.    And the position was for  
19   what?

20          A.    Assistant general manager.

21          Q.    Can you recall anybody  
22   else?

23          A.    Well, I'm not sure how old  
24   Vinnie was when I hired him, because

ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

1 I'm guessing at his age. So I  
2 don't -- I really don't know. I'm  
3 thinking Buca. So Buca, I don't  
4 know.

5 Boston Market, I can think  
6 of a couple folks in the hourly  
7 ranks.

8 Q. Any in the management  
9 ranks?

10 A. I'm not sure how old Susan  
11 Baux was, I have no idea. She's  
12 working for US Air now. I don't  
13 recall. Yeah, I'm sorry. I don't  
14 recall.

15 Q. Do you have an estimate as  
16 to how many people over 50 years old  
17 you have hired in the course of your  
18 career?

19 MR. GERHAN: Objection.

20 Asked and answered.

21 THE WITNESS: You know,  
22 based on this moment right now --  
23 BY MR. GOLDBERG:

24 Q. Yes.



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ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

1 at the fact-finding conference?

2 A. Only that the referee and  
3 the attorney asked me pretty much a  
4 lot of the same questions you  
5 asked -- not to the detail, to make  
6 me throw all those estimates out  
7 there. But he asked me a lot of the  
8 same questions about the interview  
9 process, the hiring process. That  
10 was about it.

11 It was pretty -- I think it  
12 was under an hour. I'm not sure, but  
13 it didn't seem like it was that long.  
14 But it was pretty, pretty  
15 straightforward.

16 Q. Do you recall anything that  
17 Mr. Dilemani said at the fact-finding  
18 conference?

19 A. You know, I don't.

20 Q. Do you recall anything that  
21 you said?

22 A. Sure. I said basically  
23 what I told you, except without the  
24 whole history piece.



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ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

1                   But, you know, I can't  
2 recall if Bey even gave a statement.  
3 I don't believe he gave a statement  
4 at the -- at the fact-finding that I  
5 was at.

6                   I think there might have  
7 been some maybe rebuttal questions  
8 through the attorney, but I don't  
9 recall our attorneys and -- or our  
10 people, you know, asking Bey a series  
11 of question like the attorney and the  
12 referee asked me.

13                  Q.    Do you recall anything  
14 specifically that Ms. Van Holmes  
15 said --

16                  A.    She was not at the  
17 fact-finding.

18                  Q.    Are you sure?

19                  A.    I'm pretty sure. I'm not  
20 guaranteeing, but I don't remember  
21 her there.

22                  Q.    Okay.

23                  A.    I remember Jennifer and --  
24 I don't know. Jesus.

  
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